



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of:	)	<u>Group Art Unit:</u> 3622
	)	
Leandros KONTOGOURIS	)	<u>Examiner:</u> A. Duran
	)	
Serial Number: 09/742,438	)	<u>Attorney Docket:</u> KONT3001beu
	)	
Filed: December 22, 2000	)	<u>Confirmation No.:</u> 8890

For: Advertising System And Method Which Provides Advertisers With An Accurate Way Of Measuring Response, And Banner Advertisement Therefor

AMENDMENT AND RESPONSE  
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Honorable Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA. 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application.  
No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets (no more than 5 pages are provided).

I am an attorney or agent of record.

Respectfully submitted,  
BACON & THOMAS, PLLC

Date: May 15, 2009

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**REASONS FOR REQUESTING REVIEW OF THE FINAL REJECTION**  
**(Attachment to Pre-Appeal Brief Request for Review)**

Review of the final rejections of claims 1, 5, 6, 8, 9, 12, 13, 15-21, 23, 26, 27, and 30-34 is requested for the following reasons:

2. Rejection of Claims 1, 5, 6, 8, 9, 12, 13, 15, 19-21, 23, 26, 27, and 30-32 Under 35 USC §103(a) in view of U.S. Patent Nos. 6,379,251 (Auxier), 6,339,761 (Cottingham), 5,838,314 (Neel) and 6,286,045 (Griffiths)

Reversal of this rejection is respectfully requested on the grounds that none of the applied references discloses or suggests banner ads that block access to a *user-requested* web page unless an appropriate response to the ad is made by the user, and in which the banner ads are presented upon diversion of the webpage request to a **proxy server by client software on the user's computing device**, as recited in claims 1 and 21. In particular, even assuming that concept of banner ads that block access to a user-requested web page is known in the art, the claimed invention is still not suggested by the references of record because none of them teaches having

- a proxy server present the ads,
- in response to diversion by
- client software on the user's computing device.

Of the four applied references, the only one that even mentions a proxy server is the Griffiths patent, but the proxy server disclosed in the **Griffiths** patent does not present blocking banner ads in response to diversion by client software on the user's own computing device, as claimed. Instead, the system of Griffiths initially accesses the requested webpage, and only retrieve the banner ad from the proxy server *after* the page has been access, which is clearly contrary to the claimed invention.

According to **Griffiths**, banner information is initially sent to the user's computing device(or "terminal") only after the "desired computer or web site" has been contacted. It is only after the banner information has been downloaded from the desired website that the banner server is contacted to receive the desired banner. This can be seen from **Fig. 4 of the Griffiths patent**, which shows that when the user requests a webpage (**step 74**), the page is obtained either from

storage in the user's terminal (**step 76**) or a proxy server (**step 85**). It is only after **step 88**, when the page has already been obtained, that a banner request is sent (**step 112**). Furthermore, this banner request does not involve *diversion* to a proxy server, but rather going back to the proxy server from which the originally requested web page was obtained. This is fundamentally different than the claimed invention, in which the proxy server is not a server of the requested webpage, but rather a proxy server that blocks access to the server on which requested webpage can be found.

Conquently, in Griffiths, there is no "diversion" to a proxy server that supplies banner ads, as claimed, much less control of access to the desired website. To the contrary, like a conventional banner ad, the banner ad of Griffiths is displayed simultaneously with the requested webpage. The server that supplies the banner ad does not in any way control access to the requested website, and is not even used if the banner ad is already cached or stored on the user's computing device or terminal.

Even assuming for purposes of argument that the Auxier, Cottingham, and Neel<sup>1</sup> patents can be combined to teach the claimed concept of banner ads that block access to a website unless a specific response is submitted by the user seeking access, the proposed combination of the three patents and Griffiths would not have resulted in the claimed invention. The reason is that Griffiths, the only applied reference that discloses a proxy server, uses the proxy server to first supply the requested webpage and then, if necessary, a banner ad. Griffiths does not use the proxy server in a way that would have suggested having the user's own computing device

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<sup>1</sup> The Applicant disagrees that the Auxier, Cottingham, and Neel patents teach access-blocking banner ads, for the reasons argued in Applicant's response submitted on April 28, 2008. However, the Applicant notes that U.S. Patent No. 6,636,247 (Hamzy) does teach access-blocking banner ads. Since the Examiner has threatened to re-apply the Hamzy patent if the present rejection is overcome (see the first sentence on page 14 of the Official Action dated January 28, 2008), and since the Applicant wishes to avoid a new Official Action based on the Hamzy patent, this request for reconsideration assumes that concepts taught by the Hamzy patent (and alleged to be taught by Auxier, Cottingham, and Neel) are prior art. In other words, even if the Examiner were correct that Auxier, Cottingham, and Neel suggest the concept of banner ads that *block* rather than provide access to a website, and furthermore even if the Hamzy patent were to be applied instead of the Auxier, Cottingham, and Neel patents, the result would still **not** be the invention as presently claimed.

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initially divert the user away from a requested website in order to deliver a banner ad that blocks access to a website until an appropriate response is submitted.

The only reference of record that actually does teach blocking banner ads, U.S. Patent No. 6,636,247 (Hamzy), does not teach a proxy server. The Auxier patent teaches banner ads that direct a user away from a requested website if a response to the ad is made (which is exactly opposite to the concept of the invention, in which the response results in admission to and not diversion from the website), and does not teach the claimed use of client software on the user's computing device to access a proxy server that supplies the banner advertisement. The Cottingham patent discloses targeting of advertisements based on demographic data, and also does not teach the claimed use of client software on the user's computing device to access a proxy server that supplies the banner advertisement. The Neel patent teaches a system in which hospitality industry patrons are given the option of paying for television programming or viewing and responding to interactive advertising, which clearly does not involve or require any sort of proxy server. Since the Griffiths patent teaches use of a proxy server to supply ads after a requested website has been accessed, it is respectfully submitted that one of ordinary skill in the art would not have found it obvious to use Griffiths' proxy server in connection with the website-access blocking server of either Hamzy or the proposed combination of Auxier, Cottingham, and Neel. In effect, the "proxy server" of Griffiths plays the role of the requested web server that is supposed to be blocked by the banner ad, rather a proxy server to which the user is diverted and therefore Griffiths actually teaches away from the proposed combination.

Still further, it is respectfully noted that the applied references also do not teach the claimed interaction between client software and the proxy server. According to the invention, when the user requests a particular website, the *client software* diverts the user to the proxy server. Griffiths and Auxier also teach an ad server, but the initial URL request by the user is, in both cases, not diverted to a proxy server. Instead, it is transmitted directly to the requested web server, which supplies the banner ad data used in rendering the banner ad. Components of the banner ad may be supplied by the ad server, but it is not the ad server that establishes the

connection to the requested website, as claimed. The Java applets referred-to in the Auxier patent do not have the function of the applets of the present invention, but rather are used to provide downloaded ads with an interactive gaming function, while the Griffiths patent does not disclose or suggest any sort of downloaded client or applet. In other words, whereas:

- the claimed “client software” or applets are used to divert a website request to a proxy that controls access to the website,
- the Java applets described in the Auxier patent are downloaded from an ad server in order to enable interaction with the banner ads (see, *e.g.*, col. 5, lines 47), while none of the other references teach any sort of client or applet of the type claimed.

**The claimed use of client software to divert a website request to a proxy ad server is clearly different than Auxier’s downloading of applets *from* an ad server in order to establish an interactive gaming function within an already downloaded ad (completion of the gaming sending the user *away from* rather than *toward* the already requested website. The claimed use of client software, in the context of the present invention, is therefore not taught by *any* of the references of record, including the Auxier, Cottingham, Neel, or Griffiths patents (or the Hamzy patent). Withdrawal of the rejection based on the four patents is therefore requested.**

3. Rejections of Remaining Claims Based on the Auxier, Cottingham, Neel, and Griffiths Patents, and U.S. Patent Nos. 6,338,044 (Cook) or 6,061,660 (Eggleston)

Reversal of these rejections is respectfully requested on the grounds that neither Cook nor Eggleston makes up for the failure of Auxier, Cottingham, Neel, and Griffiths to suggest the claimed diversion, by client software on the user’s computing device, of a website request to a website-blocking proxy server. Cook discloses a personal digital content for distributing programming with embedded content (and which must therefore come from a content distributor and not a proxy server to which the user is diverted from the content distributor), while Eggleston teaches incentive programs supply directly from a requested server 32, with no mention of proxy servers. Withdrawal of the remaining rejections is therefore requested.